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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON PORTLAND

DIVISION

DISABILITY RIGHTS OREGON,  
METROPOLITAN PUBLIC DEFENDER  
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

JAMES SCHROEDER, in his official  
capacity as head of the Oregon health  
Authority, and DOLORES MATTEUCCI,  
in her official capacity as Superintendent  
of the Oregon State Hospital,

Defendants,

3:02-cv-00339-MO (Lead Case)  
3:21-cv-01637-MO (Member Case)  
6:22-cv-01460-MO (Member Case)

**MOTION FOR LEAVE TO  
PARTICIPATE AS *AMICI CURIAE*  
AND MEMORANDUM IN  
SUPPORT THEREOF**

and

LEGACY EMANUEL HOSPITAL &  
HEALTH CENTER d/b/a UNITY  
CENTER FOR BEHAVIORAL HEALTH;  
LEGACY HEALTH SYSTEM;  
PEACEHEALTH, and PROVIDENCE  
HEALTH & SERVICES OREGON,

Intervenors.

JARROD BOWMAN, JOSHAWN  
DOUGLAS-SIMPSON

Plaintiffs,

v.

DOLORES MATTEUCI, Superintendent of  
the Oregon State Hospital, in her individual  
and official capacity, PATRICK ALLEN,  
Director of the Oregon Health Authority, in his  
individual and official capacity,

Defendants,

and

LEGACY EMANUEL HOSPITAL &  
HEALTH CENTER d/b/a UNITY  
CENTER FOR BEHAVIORAL HEALTH;  
LEGACY HEALTH SYSTEM;  
PEACEHEALTH, and PROVIDENCE  
HEALTH & SERVICES OREGON,

Intervenors.

LEGACY EMANUEL HOSPITAL &  
HEALTH CENTER d/b/a UNITY  
CENTER FOR BEHAVIORAL HEALTH;  
LEGACY HEALTH SYSTEM;  
PEACEHEALTH, and PROVIDENCE  
HEALTH & SERVICES OREGON,

Plaintiffs,

v.

No. 3:21-cv-01637-MO (Member Case)

No. 6:22-cv-01460-MO (Member Case)

JAMES SCHROEDER, in his official  
capacity as Director of Oregon Health  
Authority,

Defendants.

### **CERTIFICATE OF COMPLIANCE**

Undersigned counsel of record certifies pursuant to Local Rule 7.1 that they have conferred with defendants' and plaintiffs' counsel. Defendants' and Intervenor's counsel do not object to amicus participation by counties. Counsel for Plaintiff Disability Rights Oregon, Plaintiff Metropolitan Public Defenders Incorporated, and Plaintiffs Jarrod Bowman and Joshawn Douglas-Simpson object to county amicus participation.

### **MOTION**

Deschutes, Clackamas and Yamhill counties, political subdivisions of the State of Oregon respectfully submit this motion for leave to participate in this case as *amici curiae*. Deschutes, Clackamas and Yamhill counties seek to join and incorporate the two amicus briefs previously submitted by Washington and Marion counties.

### **MEMORANDUM**

#### **I. The Interests of the Counties**

Deschutes County, Clackamas County and Yamhill County will be affected by any order that this court issues. The issues before this Court affect the counties in a myriad of ways. The impact to each county is unique, substantial and serves as the basis for this court to grant leave for participation as amicus. All three counties operate as the community mental health programs (CMHPs) for their respective counties under ORS Chapter 430. Pursuant to ORS 430.630 a CMHP provides an extensive array of addictions

and mental health services to the community. These services include preventative services for children and adults, inpatient and outpatient services. The services also include crisis stabilization services to people who are in a behavioral health crisis, such as a Mobile Crisis Team, which includes clinicians available to provide free face-to-face services 24 hours a day, seven days a week. In Deschutes County there is also a Mental Health Response Team embedded with the City of Bend PD, made up of a crisis clinician and a law enforcement officer who respond to emergency calls that have a behavioral health component. CMHPs also provides a crisis telephone line. The Crisis Line staff is available to listen to a person's issues, assess the situation, offer support and safety planning, and provide referrals to local resources and treatment. Individuals released based on an arbitrary timeline without reference to mental health conditions will likely rely on county resources for mental health assistance. The CMHPs are also responsible for evaluating and assisting with community restoration of individuals. The counties have an interest in participating as amici curiae to present the court with information regarding the effects of the court's orders on these programs. Deschutes, Clackamas and Yamhill counties have interests (not necessarily identical to Washington and Marion counties) relative to transport orders issued to local sheriffs, and extensions of time associated with planning for and placing patients returned to the community for restoration.

In addition, under Oregon state law, counties are required to provide local jails. ORS 169.030. Delays in admission to the state hospital result in longer stays in the county jails. Moreover, if individuals are released from the Oregon State Hospital while still presenting a risk to themselves or others, there is a significant risk that they will be rearrested and reincarcerated in the county jail. As noted, the county sheriff's office is also

affected by the current motion for transportation from the state hospital.

## II. Relevant Legal Standards

District courts rely on Federal Rule of Appellate Procedure 29 in addressing such amicus requests. See *California v. United States Dep't of Labor*, No. 2:13-cv-02069-KJM-DAD, 2014 WL 12691095, at \*1 (E.D. Cal. Jan. 14, 2014). The Ninth Circuit has held that “[t]he district court has broad discretion to appoint amici curiae,” and the appellate court will reverse “only if the district judge has abused his discretion.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995). “The touchstone is whether the amicus is ‘helpful.’” *United States Dep't of Labor*, 2014 WL 12691095 at \*1 (quoting *Hoptowit*, 682 F.2d at 1260.)

The counties seek the opportunity to provide additional perspectives that were not otherwise represented before the inclusion of Washington and Marion counties as amici curiae. Although the case has been ongoing for almost twenty years, the remedy proposed is contrary to state law and impermissibly shifts Oregon Health Authority’s duty onto Counties and their communities. Deschutes County, Clackamas County and Yamhill County join and rely on the Amicus Brief of Marion and Washington Counties filed on August 25, 2022 (Doc #259-1) and the Amicus Brief Regarding Judicial Authority filed by Marion and Washington Counties on September 30, 2022 (Doc #290). The briefs demonstrate that there are alternatives to the proposed remedy and that the remedy itself would violate Oregon state law. No present party, apart from Washington and Marion counties (and only to the extent of identified common interest), can adequately represent the interest of the counties.

No prejudice to the parties will arise from allowing *amicus* participation. The counties will not participate in discovery; their participation will be limited to filing

memoranda and such participation at any arguments or hearings as may be allowed by the Court.

### CONCLUSION

The counties' motion for leave to participate *amicus curiae* should be granted.

DATED: May 25, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I caused true and correct copies of the foregoing **MOTION FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE* AND MEMORANDUM IN SUPPORT THEREOF** to be served upon the following listed party(ies) by:

XX NOTICE OF ELECTRONIC FILING USING THE Cm/ECF SYSTEM upon the following parties to the above entitled action on the date set forth below:

                     U.S. Mail, Second Class, Postage Prepaid on the date set forth below.

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DATED: May 25, 2023.

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